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Eighth Circuit rules OptumRx waived arbitration of two year-old claims but delegated arbitrability of newly-pled claims to an arbitrator

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The Eighth Circuit partially reversed a district court ruling denying OptumRx, Inc. ("OptumRx")'s motion to compel arbitration of Lackie Drug Store, Inc. ("Lackie")'s putative class action, concluding OptumRx waived arbitration of three claims that had been pending for over two years. *Lackie Drug Store v. OptumRx*, --- F.4th ----, 2025 WL 1948449, at *4 (8th Cir. 2025). But the Eighth Circuit reversed as to two of Lackie's newly-pled claims, holding that an arbitrator must determine whether those new claims were arbitrable. 2025 WL 1948449, at *5-7.

In November 2020, Lackie sued several pharmacy benefit managers ("PBMs"), including OptumRx. OptumRx and other PBMs contracted with a collective bargaining group called Elevate Provider Network, which represents member pharmacies like Lackie, via two contracts: a Provider Network Agreement and a Provider Manual. *Id.* at *1. The Provider Manual included a delegation clause directing that "all questions of arbitrability" must be resolved "exclusively by binding arbitration" under the American Arbitration Association ("AAA")'s rules and procedures. *Id.* at *8.

Lackie's initial class action complaint included five claims for relief, and OptumRx moved to dismiss the complaint twice. *Id.* at *2. After the district court granted the motions to dismiss in part, OptumRx filed an answer in which it asserted as an affirmative defense that Lackie's remaining claims were "subject to binding alternative dispute resolution[] procedures." *Id*. The parties then engaged in months of discovery. *Id.*

Lackie eventually moved to amend its complaint against OptumRx to add two new claims for unjust enrichment and equitable estoppel. *Id.* For the first time, OptumRx moved to compel arbitration. Lackie opposed the motion to compel arbitration, arguing that OptumRx waived any right to arbitrate by waiting more than two years to raise the issue. *Id.* at *3.

The district court rejected Lackie's waiver argument but nonetheless denied OptumRx's motion to compel arbitration on the ground that there was a conflict between the dispute resolution processes in the Provider

Network Agreement and Provider Manual. *Id.* OptumRx sought an interlocutory appeal of the district court's order, which the Eighth Circuit accepted. *Id.*

An Eighth Circuit panel reversed in part. It first held that OptumRx, which had attached the Network Agreement to its motion to dismiss and acknowledged its right to arbitrate in its affirmative defenses, "knew of its existing right to arbitrat[e]" and had acted inconsistently with that right. *Id.* at *4 (quoting *Messina v. N. Cent. Distrib., Inc.*, 821 .3d 1047, 1050 (8th Cir. 2016), *abrogated on other grounds by Morgan v. Sundance*, 596 U.S. 411, 417 (2022)). The Eighth Circuit rejected OptumRx's arguments that Lackie's original complaint did not reference the Network Agreement and that Lackie had previously asserted the two agreements did not apply, finding that OptumRx could have moved to compel arbitration in the alternative and that "Lackie's resistance has no bearing on OptumRx's knowledge of its own rights." *Id.*

But the Eighth Circuit took a different tack as to the two newly-pled claims for unjust enrichment and equitable estoppel, holding that because "a waiver of arbitral rights only applies to claims that were actually pled, not hypothetical ones not yet raised," OptumRx could seek to compel arbitration as to those newly-added claims. *Id.* at *5.

The Eighth Circuit also reversed the district court on the delegation clause question, finding that because both Lackie and OptumRx agreed that the Network Agreement and Provider Manual applied, and Lackie had not challenged the delegation clause in the Provider Manual, an AAA arbitrator must decide the threshold question of whether the two newly-pled claims were subject to arbitration. *Id.* at *8-9.

Takeaway: *Lackie Drug Store* serves as a helpful reminder that a party seeking to arbitrate should move to compel arbitration as early as possible, even if in the alternative. The opinion also clarifies that, at least in the Eighth Circuit, an arbitration waiver only applies to claims actually pled and does not necessarily extend to newly-asserted claims.